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**9. Railroads (§ 312 (3)\*)—Statute Requiring Signals Sounded “Continuously” or “Alternately” Not Complied with by “Intermittent” Signal.**—It is proper to refuse an instruction that signals be given intermittently until the crossing.

Error to Circuit Court, Botetourt County.

Action by R. S. Simmons against the Norfolk & Western Railway Company. Judgment for plaintiff, and defendant brings error. Affirmed.

*Staples & Cocke*, of Roanoke, for plaintiff in error.

*Haden & Haden*, of Fincastle, for defendant in error.

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TALLEY *v.* COMMONWEALTH.

June 10, 1920.

[103 S. E. 612.]

**1. Taxation (§ 93 (1)\*)—Intangible Personal Property Taxable Only at Domicile.**—Intangible personal property is not taxable, under Code 1904, §§ 491, 494, as amended by Acts 1915, c. 147, where the owner is not domiciled in the state.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 968.]

**2. Domicile (§ 2\*)—Not Equivalent of “Residence.”**—“Domicile” and “residence” are not interchangeable words of the same or equivalent meaning, as a man can have but one domicile at one and the same time, but he may have several residences.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Domicile; Residence; Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 116; 4 Va.-W. Va. Enc. Dig. 781.]

**3. Domicile (§ 4 (2)\*)—Continues to Exist Until Another Is Acquired.**—A domicile continues to exist until another is acquired elsewhere, and to effect a change of domicile there must be an actual abandonment of the old domicile, coupled with an intent not to return to it, and also a new domicile acquired at another place, which can only be done with a union of intent and personal presence.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 116; 4 Va.-W. Va. Enc. Dig. 781.]

**4. Domicile (§ 11\*)—Existence a Mixed Question of Law and Fact.**—The existence or nonexistence of a domicile in a given locality is a mixed question of law and fact.

**5. Taxation (§ 500\*)—Burden on State to Show Change of Domicile from Another State.**—In a proceeding to have an assessment of intangible personal property adjudged illegal and void, where it was shown that the deceased owner had abandoned her domicile in the

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\*For other cases see same topic and KEY-NUMBER in all Key-numbered Digests and Indexes.

state, and had acquired one in another state, the burden was thrown upon the state to show that deceased, on returning to the state, intended to abandon the domicile acquired in the other state and to establish one in the state, notwithstanding that an assessment of taxes is presumed to be legal and valid until the contrary is affirmatively shown; a domicile being presumed by law to exist until another is acquired elsewhere.

**6. Taxation (§ 500\*)—Evidence Held Not to Overcome Positive Establishment of Domicile in Another State.**—Where it was affirmatively established that the deceased owner of the property had abandoned her domicile in the state, and had acquired a domicile elsewhere, and then returned to the state, evidence held insufficient to overcome the presumption that the deceased was domiciled in the other state at the time of her death.

Error to Hustings Court of Richmond.

Proceeding by Robert H. Talley, administrator of Mrs. Ellen Vance, deceased, against the Commonwealth. From an order making an assessment of taxes, the petitioner brings error. Reversed.

*R. H. Talley*, of Richmond, for plaintiff in error.

*John R. Saunders, Atty. Gen.*, and *J. D. Hank, Jr., Asst. Atty Gen.*, for the Commonwealth.

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MERCHANTS' & MINERS' TRANSP. CO. *v.* L. J. UPTON & CO.,

June 10, 1920.

[103 S. E. 616.]

**1. Carriers (§ 123\*)—Liable for Loss Where Negligence Concurred with Act of God.**—While a carrier is exempt from liability if the act of God is the proximate and sole cause of loss, the carrier is liable if its negligence concurs in and contributes to the loss, as where negligent delay in a shipment produces a condition where act of God causes injury.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 680, 681.]

**2. Carriers (§ 136\*)—Whether Carrier's Negligence Contributed to Act of God Held for Jury.**—Where the defendant carrier on receipt of a shipment of potatoes in December agreed to immediately deliver them to connecting carriers, but failed to do so for nearly a week, and the potatoes were damaged by freezing, the question whether the carrier's negligent failure to make immediate delivery

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.